Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Application by Verizon Maryland, Inc., Verizon Washington, D.C., Inc., Verizon West Virginia, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C. and West Virginia	)	WC Docket No. 02-384

OPPOSITION COMMENTS OF CORE COMMUNICATIONS, INC.

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SUMMARY

The Federal Communications Commission ("Commission") should reject Verizon's 271 application to provide in-region interLATA service in Maryland. Core does not provide service in either Washington, D.C. or West Virginia and, therefore, will limit its opposition comments to its experiences in Maryland. Nevertheless, as Core will demonstrate, Verizon has failed to meet section 271 checklist standards with respect to interconnection, loops, and transport. Therefore, while Verizon's noncompliance with the 271 checklist requirements is most likely pervasive throughout Maryland, Washington, D.C. and West Virginia, at a minimum, Verizon should be prohibited from providing long distance service in the state of Maryland.

Verizon's failure to meet several checklist standards is clear and demonstrable. Verizon's Dedicated Entrance Facility Policy – by which Verizon refuses to interconnect using its own, existing network facilities – violates the technical feasibility, equal in quality, and nondiscriminatory interconnection standards of section 251(c)(2). Thus, Verizon's Dedicated Entrance Facility Policy by itself violates checklist item one.

Verizon's refusal to provide automatic number identification ("ANI") to interconnecting CLECs – which would allow CLECs to identify the calling party for calls originating on the Verizon network – violates the equal in quality and nondiscriminatory interconnection standards of checklist item one.

Verizon has also failed to provide meaningful access to dark fiber by refusing to provide availability information and by arbitrarily refusing to cooperate with valid dark fiber requests. Such failure violates the unbundling requirement of section 251(c)(3) and specific Commission guidance requiring access to such information. Because the Commission requires Verizon to offer dark fiber as both a loop and a transport UNE, Verizon's unreasonable practices violate checklist items four (loops) and five (transport).

Finally, Verizon has failed the independent public interest standard of section 271(D)(3)(c) of the Act. The Maryland local telecommunications market has not been irreversibly open to competition. As will be discussed below, currently, ISP service is the only successful point of entry in Maryland as CLECs terminate over thirty-seven times the traffic they originate. Furthermore, Verizon has paid lip service to the Maryland Public Service Commission's conditions laid out in its December 16, 2002 conditional approval letter with regard to entrance facility interconnection and dark fiber. The two issues discussed in the MDPSC's conditional approval letter are specific to Core. Core is confident other carriers will bring other noncompliance issues before the Commission.

For these reasons, as detailed below, the Commission should deny Verizon's application until such time as Verizon can demonstrate complete compliance with its section 271 checklist obligations.

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CORE COMMUNICATIONS, INC.

Core Communications, Inc., ("Core") by its attorneys, hereby submits these comments in opposition to the Application filed by Verizon Maryland, Inc., Verizon Washington, D.C., Inc., Verizon West Virginia, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services, Inc. (collectively "Verizon") for authority to provide in-region interLATA services is the states of Maryland, pursuant to Section 271 of the Communications Act of 1934, as amended ("the Act").[1]

[1] 47 U.S.C. § 271. *See Comments Requested on the Application by Verizon Maryland, Verizon Washington, D.C., and Verizon West Virginia for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Public Notice, WC Docket No. 02-384, DA 02-3511 (2002). Hereinafter referred to as "Verizon 271 Application".

Core is a facilities-based Competitive Local Exchange Carrier ("CLEC") based in Annapolis, Maryland. Core has been providing competitive telecommunications services in Maryland since founded in 1999. Since that time, Core has incrementally built out its network to include all of Maryland as well as much of Pennsylvania and Delaware.

Currently, Core accounts for over fifteen percent of Verizon's relied-upon, facilities-based interconnection traffic in Maryland and substantially all of this traffic on the Eastern Shore of Maryland. Core provides a variety of services, including modem and bandwidth services and 100 megabit Ethernet services. Most recently in 2002, Core introduced beta electronic fax service. Because Core does not provide service in Washington, D.C. or West Virginia, Core will limit its opposition comments to its experiences in Maryland.

I. VERIZON'S DEDICATED ENTRANCE FACILITY POLICY VIOLATES SECTION 251(C)(2) AND THEREFORE CHECKLIST ITEM ONE – INTERCONNECTION

Verizon's policy of refusing to utilize existing facilities for entrance facility interconnection violates Checklist Item one. When a CLEC requests entrance facility interconnection[2] at a CLEC central office, Verizon's policy is to refuse use of existing, shared Verizon network facilities. Instead, Verizon forces the CLEC to wait for six months to a year or more while Verizon constructs new, dedicated facilities built solely for interconnection purposes. Only once Verizon has completed construction of these dedicated facilities will Verizon complete the interconnection process by providing actual interconnection trunks.

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[2] An "entrance facility" is a physical connection that connects a CLEC Central Office to a Verizon Central Office. Entrance facility interconnection is a method of interconnection in which Verizon chooses to collocate its interconnection equipment within the CLEC POP, and connected to the Verizon network by means of one or more entrance facility circuits. *See generally, In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271 (c)*, Direct Testimony of Douglas A. Dawson on Behalf of Core Communications, Inc. ("Dawson Direct"), at 9 (July 15, 2002). The Dawson direct testimony is attached hereto as Exhibit A.

Verizon's Dedicated Entrance Facility Policy[3] has multiple anti-competitive effects. These include, adding unnecessarily to the cost of interconnection, delaying CLEC entry into new markets, and hamstringing a CLEC's ability to plan and execute new service rollouts.

Verizon's Dedicated Entrance Facility Policy is well documented in proceedings before the Maryland Public Service Commission ("MDPSC").[4] In fact, in the MDPSC's December 16, 2002 conditional approval letter, the MDPSC notes that Verizon seemingly modified its "previous policy" of refusing to interconnect using existing shared entrance facilities.[5] Verizon has not taken any steps, in Maryland, to live up to the conditions set forth in the MDPSC's letter by providing interconnection over shared entrance facilities in accordance with Core's requests.

Verizon's Dedicated Entrance Facility Policy violates item one (interconnection) of the section 271 checklist. Checklist Item one requires Verizon to provide "interconnection in accordance with section 251(c)(2)" of the Act.[6] Among other things, section 251(c)(2) of the Act requires Verizon to provide interconnection to CLECs: (1) "at any technically feasible point"[7]; (2) "that is at least equal in quality to that by provided by [Verizon] to itself [and others, including affiliates]"[8]; and (3) "on rates, terms, and conditions that are just, reasonable, and

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3 This term shall be used throughout this brief to refer to Verizon's policy as outlined herein.

4 *See Review by the Commission into Verizon Maryland, Inc.'s Compliance with the Conditions of 47 U.S.C., § 271(c)*, Case No. 8921 ("MDPSC Case No. 8921"); *see also In the Matter of the Complaint of Core Communications, Inc. v. Verizon Maryland, Inc.*, Case No. 8881 ("MDPSC Case No. 8881").

5 Letter from MDPSC Commissioners to William R. Roberts, President Verizon Maryland, Inc. at 6 (Dec. 16, 2002).

6 47 U.S.C. § 271(c)(2)(B)(i). *Also see*, Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia, Inc., Verizon Global Networks, Inc., and Verizon Select Services of Virginia, Inc. for Authorization to Provide In-Region, InterLATA Services in Virginia, Memorandum Opinion and Order, 17 FCC Rcd at 21880, ¶ C-17 ("Virginia 271 Order").

7 *Id.* § 251(c)(2)(B).

8 *Id.* § 251(c)(2)(C).

nondiscriminatory."[9] Verizon's Dedicated Entrance Facility Policy violates the technically feasible, equal in quality, and nondiscriminatory standards of section 251(c)(2).

A. Verizon's Dedicated Entrance Facility Policy Is Systemic And Well Documented

There can be no doubt that Verizon – as a matter of policy – uses only newly constructed, dedicated facilities for CLEC interconnection purposes. The Dedicated Entrance Facility Policy can be documented in Maryland, in practice, as well as by Verizon's statements in proceedings before the MDPSC.[10] Notwithstanding past practice and policy statements, Verizon testified at the hearings before the MDPSC – amazingly – that it has no such policy. In fact, Verizon testified that it has no written policies at all for entrance facility interconnection. Verizon's attempts to rewrite its record of noncompliance with checklist item one should not deceive this Commission.

Core has sought enforcement efforts both from the MDPSC, as described in above and with this Commission. Specifically, Core filed a formal complaint with the Enforcement Bureau on March 21, 2001 raising issues of interconnection delay.[11] Core's complaint has yet to be resolved. Moreover, Core's complaint is the oldest pending complaint in the Enforcement Bureau. After utilizing all enforcement mechanisms available, with no current resolution, Core seeks that this Commission will not grant Verizon 271 approval and effectively thwart Core's efforts.

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9 *Id.* § 251(c)(2)(D).

10 Verizon's Dedicated Entrance Facility Policy is also at issue in a separate complaint proceeding before the MDPSC, Case No. 8881. However, the MDPSC has noted that "Core is not precluded from raising the substance of its pending MDPSC Case No. 8881 complaint before both this Commission and the FCC during the respective §271 proceedings, particularly if Core believes that the complaint is indicative of a systemic problem warranting the FCC's finding of checklist noncompliance."[10] MDPSC Case No. 8921, Order No. 78088, at 3 (Oct. 24, 2002).

11 *In the Matter of Core Communications, Inc. v. Verizon Maryland, Inc. f/k/a Bell Atlantic-Maryland, Inc.*, File No. EB-01-MD-007 (Mar 21, 2002).

1. Verizon's policy constitutes a "systemic problem" that must be rectified before obtaining section 271 authority

Since 1999, Core has requested interconnection with Verizon at eleven Core switch centers, located in ten LATAs (including Maryland), pursuant to five different interconnection agreements.[12] For eight of these eleven POPs, Core noted the existence of previously installed Verizon network equipment (i.e., a functioning, in-service multiplexer with spare capacity, connected by fiber to a Verizon CO), and requested specifically that Verizon use that equipment to facilitate interconnection.[13] For eight of eight of these interconnections, Verizon denied Core's request, and informed Core that Verizon would not interconnect with Core until Verizon had completed construction of new, dedicated facilities (a dedicated fiber ring between the Core POP and Verizon CO).[14] To quote Verizon witness Donald E. Albert's testimony before the MDPSC, "to me a policy is something that we always, always do. That's what a policy would be."[15] Clearly, Verizon's Dedicated Entrance Facility Policy is the type of "systemic problem" that must be corrected before this Commission approves Verizon's 271 Application.

Verizon's Dedicated Entrance Facility Policy has obvious, anti-competitive effects. First, the policy impedes CLEC entry into local markets. Without interconnection to Verizon, a facilities-based CLEC can not enter the market – a CLEC's customers must be able to make and receive calls to and from Verizon's customers.[16] Verizon's Dedicated Entrance Facility Policy delays the interconnection process by adding the unnecessary and extremely time-consuming

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12 MDPSC Case No. 8921, Declaration of Bret L. Mingo on behalf of Core Communications, Inc. ("Mingo Declaration"), at 1. The Mingo Declaration is attached hereto as Exhibit B.

13 *Id.* at 2.

14 *Id.* at 2.

15 MDPSC Case No. 8921, Transcript, at 685-86 (Tuesday, October 29, 2002). Relevant excerpts of the transcript are attached hereto as Exhibit C.

16 *See*, Dawson Direct, at 22-23 attached hereto as Exhibit A. *See Also*, MDPSC Case No. 8921, Transcript at 727-29 (Tuesday, October 29, 2002) attached hereto as Exhibit C.

step of constructing a dedicated fiber ring where an existing, shared ring facility would suffice. The construction can take anywhere from six months to a year or more. That delay translates directly into a minimum six-month delay in a CLEC's market entry in a given area.

Second, the policy adds unnecessary costs to the interconnection process. Interestingly, it adds to both the CLEC's and Verizon's costs. A CLEC pays additional rent, utility, and equipment costs to maintain its POP while Verizon constructs new, dedicated facilities. Verizon will not even discuss interconnection until the CLEC has designated an address and specific interconnection facilities and equipment, so there is no chance for a CLEC to "time" the construction process.[17] Verizon pays additional costs in constructing new, dedicated facilities, including two or more fiber multiplexer units, at least two fiber strands between the Core POP and the Verizon CO, and additional collocation charges at the CLEC POP.

Finally, because the construction process is unpredictable, a CLEC risks losing customers who would otherwise prefer that CLEC's services. Verizon takes the position that it has sole control over the construction process, and does not make any meaningful commitment to complete the construction on any schedule. That means the CLEC cannot relay meaningful information to its potential customers regarding time to market. Without that information, many customers would prefer simply to remain with Verizon.

Core has raised its issues regarding Verizon's Dedicated Entrance Facility Policy in a complaint against Verizon before the MDPSC.[18] As MDPSC Staff testified in Core's complaint proceeding:

> The immediate benefit to an incumbent is that delayed entry creates additional costs for competitors. The fact that the competitor cannot operate and earn revenue while it continues to incur expenses only adds to the disadvantages that a

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17 *See*, MDPSC Case No. 8921, Transcript at 727-29 attached hereto as Exhibit C.

18 MDPSC Case No. 8881.

new CLEC faces. The longer the delay, the greater the cost the incumbent carrier can impose and the less likely that the competitor will succeed in the long run. In addition, if the competitor has a business plan that targets certain customer groups, then the incumbent can market its services more aggressively during the period of delay. The Telecommunications Act of 1996 and its subsequent implementation by the FCC reflect the effort that was undertaken to minimize the opportunity for incumbent carriers to engage in these kind of activities.[19]

2. **Verizon's recent offers to interconnect using existing, shared facilities only highlights the existence of a systemic problem.**

In an obvious reaction to the MDPSC's consideration of Verizon's Dedicated Entrance Facility Policy in the context of the section 271 compliance proceeding,[20] Verizon recently began to consider using existing, shared facilities to interconnect with Core.

For two Core POPs where Verizon previously refused to use existing, shared facilities, Verizon has now offered to do precisely that. After rejecting Core's request to use existing, shared facilities to interconnect in Altoona, Pennsylvania on October 9, 2002, Verizon offered to use existing, shared facilities on October 23, 2002 – five days before the commencement of Verizon's section 271 compliance hearings before the MDPSC.[21] And, after rejecting Core's request to use existing, shared facilities to interconnect in Salisbury, Maryland on May 23, 2002, Verizon offered to use existing, shared facilities on November 1, 2002 – on the next to last day of hearings in that case.[22]

After denying eight of eight requests to use existing, shared facilities, over a span of four years, Verizon has reversed itself and has "offered" to satisfy two such requests (each of which it previously rejected) in the span of one week. The strings attached to this offer have yet to be

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19 Case No. 8881, Direct Testimony of Steve Molnar on Behalf of Staff ("Molnar Direct"), at 18 (September 21, 2001). The Molnar Direct testimony is appended to the Mingo Declaration, which in turn, is attached hereto as Exhibit B.

20 *See, e.g.,* Case No. 8921, Order No. 78088, at 3 (Oct. 24, 2002).

21 Mingo Declaration, at 5 attached hereto as Exhibit B.

22 *Id.*

articulated by Verizon, however. This Commission should consider the two last-minutes offers in light of their obvious intent – to win 271 approval without committing to policies and practices that will permit competition on an irreversible and lasting basis.[23]

3. Verizon's assertion that it provides interconnection to CLECs over existing shared facilities is in complete contradiction to Core's experience in Maryland.

In its 271 Application, Verizon states that, "in accordance with the Maryland PSC's requirements, Verizon is allowing CLECs to obtain interconnection over existing loop facilities that are shared with Verizon's retail customers when capacity exists...."[24] This is in clear contradiction to Core's repeatedly defeated attempts to interconnect with Verizon over shared facilities.

First, in Core's extensive experience, Verizon has maintained a steadfast policy of using only newly constructed, dedicated facilities for interconnection purposes. This policy is demonstrated by the fact that, on eight occasions between August 1999 and October 2002, Verizon flatly refused specific requests to interconnect with Core at a Core POP using existing, shared facilities.[25]

In responding to Core's interconnection requests, Verizon account managers and engineers have repeatedly put Verizon's Dedicated Entrance Facility Policy in clear and concise terms:

- On September 5, 2000, a Verizon account manager stated: "As you know "common muxes" in a building are not utilized for interconnection. If there is no third party provider or cages, we will have to wait until these entrances are complete before we can provide service."[26]

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23 *See Id.*, at 6-7.

24 Verizon 271 Application at n. 18.

25 Mingo Declaration, at 2 attached hereto as Exhibit B.

26 *Id.* at 3. *See also* email dated Sep. 5, 2000 from Joe DiMarino, Verizon to Bret Mingo, Core; re: Pittsburgh/New York Entrance attached hereto as Exhibit D.

- On November 9, 2001, the same Verizon account manager stated: "We do not use a common mux for wholesale services."[27]

- On May 23, 2002, a Verizon interconnection engineer stated: "[C]ommon mux cannot/will not be utilized."[28]

There can be no doubt that Verizon has a policy – de facto if not de jure of denying use of existing facilities for entrance facility interconnection. Such a practice clearly violates Checklist Item one.

B. Verizon's Dedicated Entrance Facility Policy Violates the Section 251(c)(2) "Technically Feasible" Standard

The Commission has clarified significantly the contours of section 251(c)(2)'s "technical feasibility" standard. First, the Commission has concluded that the term "technically feasible" refers "solely to technical or operational concerns, rather than economic, space or site considerations."[29] Moreover, this Commission has determined that the obligations imposed by section 251(c)(2) "include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection...."[30] Furthermore, section 251(c)(2) "bars consideration of costs in determining 'technically feasible' points of interconnection."[31] A BOC, such as Verizon, also "must accept the novel use of, and modification to, its network facilities to accommodate the interconnector...."[32] Finally, ILECs, such as Verizon, "have a duty to make available to

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27 *Id.* at 3. *See also* email dated Nov. 9, 2001 from Howard Levine, Verizon to Bret Mingo, Core; re: Core entrance Facility attached hereto as Exhibit E.

28 *Id.*at 3. See also email dated May 23, 2002 from Howard Levine to Chris Van de Verg, Core; re: A couple questions attached hereto as Exhibit F.

29 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 198 (1996) ("Local Competition Order") (subsequent history omitted).

30 *Id.*, at ¶ 198.

31 *Id.*, at ¶ 202.

32 *Id.*

requesting carriers general information indicating the location and technical characteristics of incumbent LEC network facilities."[33] At bottom, section 251(c)(2)'s "technical feasibility" standard encompasses "more than what is merely 'practical' or similar to what is ordinarily done."[34]

Verizon's Dedicated Entrance Facility Policy violates its section 251(c)(2) duty to provide interconnection at any technically feasible point. Verizon admitted in its Reply Checklist Declaration before the MDPSC that using existing, shared facilities for entrance facility interconnection is technically feasible.[35] Indeed, Verizon very recently has offered to interconnect with Core using existing, shared facilities in Salisbury, Maryland.[36] Yet, Verizon has as of yet failed to take action to interconnection with Core in Salisbury. Verizon's own statements and conduct, then, demonstrates that Verizon's Dedicated Entrance Facility Policy[37] violates the technically feasible standard. Verizon's incentive for refusing to provide interconnection at this clearly technically feasible point is obvious. Verizon's Dedicated Entrance Facility Policy forces CLECs "to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects."[38]

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33 *Id.*, at ¶ 205.

34 *Id.*, at ¶ 202.

35 MDPSC Case No. 8921, Verizon Reply Checklist Declaration, ¶ 44 attached hereto as Exhibit G. *See also* Molnar Direct, at 15 ("Verizon does not dispute that [the interconnection requested by Core] is technically feasible".) The Molnar Direct testimony is appended to the Mingo Declaration, which in turn, is attached hereto as Exhibit B.

36 *See* MDPSC Case No. 8921, Transcript at 685-86 attached hereto as Exhibit C.

37 *See, e.g.*, Molnar Direct, at 14 ("Verizon claims that it did not discriminate in its treatment of Core but, rather, followed its established requirement that entrance facilities can only be provided on a dedicated basis. If all carriers are treated alike, [according to Verizon,] there can be no claim of discrimination."). The Molnar Direct testimony is appended to the Mingo Declaration, which in turn, is attached hereto as Exhibit B.

38 Local Competition Order, at ¶ 205.

In defense of its policy, Verizon implies that dedicated facilities are necessary to address unspecified "reliability issues."[39] However, as Core witness Douglas A. Dawson testified on cross examination before the MDPSC, the difference in reliability between dedicated and shared fiber ring facilities is infinitesimal: "We're talking a difference of three [n]ines and four [n]ines and a few extra minutes a year of average down time. The loop facilities Verizon builds are very good facilities. Otherwise you'd have a whole flood of customer complaints."[40]

Moreover, Verizon's reliability concerns are based on a misinterpretation of a CLEC's motive in requesting the use of existing, shared facilities. CLECs request existing, shared facilities because such use permits timely and efficient market entry, not because CLECs specifically prefer shared versus dedicated facilities on a technical basis. In the case where Verizon does have legitimate capacity or reliability concerns, the logical solution would be to provide as much capacity as is reliably available to the CLEC over existing, shared facilities, and, in a parallel process, construct a new dedicated facility. Once the new facility is complete, Verizon could, at its option, migrate the initial interconnection trunks from the old shared facility to the new, dedicated one.

This "migration" procedure is clearly a technically feasible solution to Verizon's purported reliability concerns. Indeed, Verizon's witness, Mr. Albert, outlined just such a procedure in written testimony in a proceeding in West Virginia on this very issue. According to

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39 MDPSC Case No. 8921, Verizon Reply Checklist Declaration, at ¶ 44 attached hereto as Exhibit G.

40 MDPSC Case No. 8921, Transcript, at 720 attached hereto as Exhibit C.

Mr. Albert, such "migrat[ions]" are done "routinely," and "[p]erforming this work without service disruption is a basic and standard procedure."[41]

In sum, not only is interconnection with existing, shared facilities technically feasible, there is a routine solution to handle any resulting reliability differences that may (but probably do not) exist between shared and dedicated facilities. Verizon's Dedicated Entrance Facility Policy therefore violates the technically feasible standard of section 251(c)(2) and Checklist Item one.

C. Verizon's Entrance Facility Interconnection Policy Violates the Section 251(c)(2) "Equal In Quality" Standard

The Commission has explained that "the equal in quality [interconnection standard of section 251(c)(2)(C) of the Act] requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, *or any other party*."[42] Elaborating on this standard, the Commission went so far as to state in section 51.305(a)(5) of its interconnection regulations:

> An incumbent LEC shall provide ... interconnection with the incumbent LEC's network ... [o]n terms and conditions ... that are no less favorable than the terms and conditions upon which the incumbent LEC provides interconnection to itself. This includes, but is not limited to, *the time* within which the incumbent LEC provides such interconnection.[43]

Further explaining the rationale behind the Commission's equal in quality standard, MDPSC Staff testified in another proceeding in Maryland:

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41 *See, North County Communications Corporation v. Verizon West Virginia Inc.*, WV PSC Case No. 02-0254-T-C, Rebuttal Testimony of Donald E. Albert, at 24 (Oct. 4, 2002). The relevant excerpt is attached hereto as Exhibit H.

42 Local Competition Order, at ¶ 224 (emphasis added).

43 47 C.F.R. § 51.305(a)(5) (emphasis added).

> I believe that a requesting carrier would perceive the equal [in quality] interconnection standard to include installation intervals that are equal to those Verizon provides to itself in serving retail customers. Anything less would mean that Verizon would have the ability to create an advantage for itself by serving its retail customers expeditiously while delaying the market entry of its potential competitors.[44]

Verizon's Dedicated Entrance Facility Policy violates its section 251(c)(2) duty to provide equal in quality interconnection. As shown above, the equal in quality standard requires Verizon to provide interconnection to CLECs in the same interval as it would provide the same function to its own retail operations. The relevant retail interval comparison for Verizon's provision of interconnection entrance facility circuits is Verizon's tariffed interval for provision of special access circuits to its own end users.[45] Simply put, there is no technical distinction between the two services.[46] Assuming there is available capacity on existing, shared facilities, the entrance facility circuit and the special access circuit can and should be provisioned within the same interval. So, if a CLEC requested a DS3 entrance facility circuit for interconnection, Verizon should provision that circuit in the same 20-business day interval as it would provide a special access DS3 circuit to an end user.[47] Instead, Verizon's Dedicated Entrance Facility Policy results in an interval of no less than six months, and often, more than one year.[48]

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44 Molnar Direct, at 17. The Molnar Direct testimony is appended to the Mingo Declaration, which in turn, is attached hereto as Exhibit B.

45 *Id.*, at 21.

46 Dawson Direct, at 11 ("There are no issues, from a technical standpoint, of CoreTel being considered a carrier... Essentially, a T1 is a T1 whether it is used for carrier grade service or customer grade service.") attached hereto as Exhibit A.

47 Molnar Direct, at 21. The Molnar Direct testimony is appended to the Mingo Declaration, which in turn, is attached hereto as Exhibit B.

48 *See*, Molnar Direct, at 23; *and see*, Mingo Direct, at 5-6 both are attached hereto as Exhibit B.

Attempting to flout its "equal in quality" obligation, Verizon brazenly alleges that it has the "sole right and discretion" with respect to how it interconnects with Core.[49] This Verizon position, however, runs squarely against the section 251(c)(2)'s equal in quality standard, and is thus contrary to Checklist Item one. In another proceeding before the MDPSC, Staff found that "it is clear that the FCC requires provisioning intervals for interconnection that apply to CLECs to be the same as those which apply to the incumbent carrier, or Verizon."[50]

As demonstrated above, Verizon's Dedicated Entrance Facility Policy violates section 251(c)(2)'s equal in quality standard. In addition to technically feasible, this is a second independent basis to find that Verizon has failed to satisfy Checklist Item one.

D. Verizon's Entrance Facility Interconnection Policy Violates The Section 251(c)(2) "Nondiscrimination" Standard

The Commission has concluded that the term "nondiscriminatory" requires both a comparison of how Verizon treats third parties and how Verizon treats itself. As the Commission has found:

> Because the ILECs have an incentive to discriminate in favor of themselves, "...we reject for purposes of section 251, our historical interpretation of 'nondiscriminatory,' which we interpreted to mean a comparison between what the incumbent LEC provided other parties in a regulated monopoly environment. We believe that the term 'nondiscriminatory,' as used throughout section 251, applies to the terms and conditions an incumbent LECs imposes on third parties as well as itself. In any event, by providing interconnection to a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be 'just' and 'reasonable' under section 251(c)(2)(D)."[51]

Further elaborating on this standard in the section 271 context, the Commission has noted that incumbent LECs must "provide interconnection to [CLECs] in a manner no less efficient than

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49 Verizon Reply Checklist Declaration, at ¶ 42 attached hereto as Exhibit G. *See also*, MDPSC Case No. 8921, Transcript, at 701 attached hereto as Exhibit C.

50 Molnar Direct, at 18. The Molnar Direct testimony is appended to the Mingo Declaration, which in turn, is attached hereto as Exhibit B.

51 Local Competition Order, at ¶ 218.

the way in which the incumbent LEC provides the comparable function to its own retail operation."[52]

Verizon's Dedicated Entrance Facility Policy violates its section 251(c)(2) duty to provide nondiscriminatory interconnection. The policy is discriminatory because it denies CLECs access to Verizon's vast, functioning, and reliable existing network. In effect, Verizon's policy reserves all existing network capacity for retail purposes. Interconnecting CLECs get access only to specific, separate, newly constructed, dedicated facilities. Verizon does not deny this. In its Reply Declaration before the MDPSC, Verizon readily admits that it refuses to interconnect with Core over existing, shared facilities in order to reserve capacity for Verizon's own "future service requirements."[53] This is exactly the type of discrimination that violates section 251(c)(2) of the Act, and the requirements of checklist item one.

Verizon seeks to defend its discriminatory conduct by alleging that "Verizon MD cannot discriminate against carriers in the provision of interconnection trunk services in favor of its end user customers, since it does not provide interconnection trunking to end users in the first place."[54] However, Verizon's claim directly contradicts the plain language of the statute and the Commission's implementing rules. Verizon mistakenly believes that its nondiscrimination obligation only requires that Verizon treat CLECs equally, without regard to how Verizon treats itself.[55] This is pure nonsense, however.

As the Commission has noted in the section 271 context:

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52 *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York,* Memorandum Opinion and Order, 15 FCC Rcd 75, ¶ 65 (1999) ("New York 271 Order").

53 Verizon Reply Checklist Declaration, at ¶ 43 attached hereto as Exhibit G.

54 *Id.*

55 Verizon Reply Checklist Declaration, ¶ 42 attached hereto as Exhibit G.

> [F]or those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its **own retail service offerings**, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is **equal to (i.e., substantially the same as) the level of access** that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[56]

In addition, the MDPSC Staff testified in the Core complaint proceeding before the MDPSC:

> Verizon is attempting to cloud the application of the Act and the FCC's rules by claiming that Verizon only interconnects with carriers and not retail customers. According to Verizon, there should be no comparison between the provision of interconnection to carriers and the provision of retail services to retail customers. Contrary to Verizon's contention, if it were not appropriate to make such a comparison, the plain language of the Act and the FCC's rules would have no meaning.[57]

Of course, Verizon would prefer that its nondiscrimination obligation had no meaning, but the law, the Commission's implementing rules, and section 271 require otherwise.

Therefore, in addition to Verizon's failure to meet the technically feasible and equal in quality standards, its failure to meet the nondiscriminatory interconnection standard is a third independent basis to find that Verizon has failed to satisfy checklist item one.

II. VERIZON'S POLICY TO REFUSE TO PASS ANI INFORMATION OVER LOCAL INTERCONNECTION TRUNKS VIOLATES SECTION 251(C)(2) AND THEREFORE CHECKLIST ITEM ONE – INTERCONNECTION

It is Verizon's policy that when a CLEC interconnects with Verizon using multi-frequency ("MF") signaling, Verizon refuses to pass automatic number identification ("ANI") to the CLEC's switch.[58] ANI information essentially lets the CLEC's switch know from which

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56 New York 271 Order, ¶ 65.

57 Case No. 8881, Rebuttal Testimony of Steve Molnar on behalf of Staff ("Molnar Rebuttal"), at 9 (Oct 19, 2001). The Molnar Rebuttal is attached to the Mingo Declaration attached hereto as Exhibit B.

58 Dawson Direct, at 24 attached hereto as Exhibit A; Transcript at 716 ("MR. DAWSON: I have one clarification. On pages 24 and 25 apparently yesterday there was some

Verizon phone number an incoming call is being placed – a wholesale analogue of "Caller ID."[59] ANI information is critical to a CLEC's ability to offer a range of next-generation services that can recognize the calling parties number, make routing, billing and feature set decisions accordingly.[60]

Verizon's policy violates the equal in quality and nondiscriminatory interconnection standards of section 251(c)(2). Verizon passes ANI information to:

- IXCs, which generally use MF signaling to interconnect with Verizon;[61]
- CLECs that use signaling system seven ("SS7") to interconnect with Verizon;[62] and
- CLECs that use MF signaling, but only CLECs that interconnect with Verizon for long distance as well as local traffic.[63]

Verizon concedes that it is feasible to pass ANI information over MF trunks and goes on to say that "ANI is used for billing purposes," which is exactly why Core is seeking ANI information.[64] Even though ANI can be passed over Core's MF trunks, because Core is not an IXC, does not use SS7 signaling, and is not a CLEC that exchanges long distance as well as local traffic, Verizon will not pass ANI information.[65] Since there is no regulatory requirement for

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confusion on the issue CPN and ANI. On those two pages I used the term CPN several times. I'd like to point out in every case I used that I also could substitute, ANI.") attached hereto as Exhibit C.

59 *Id.*

60 *Id.*

61 Reply Checklist Declaration at 19 attached hereto as Exhibit G.

62 Letter from Verizon to CoreTel at 1(Sept. 13, 2002). This letter is attached hereto as Exhibit I.

63 *Id.*

64 *See* Verizon 271 Application, Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at ¶37.

65 *See* Email dated January 9, 2003 from Howard Levine, Verizon to Bret Mingo re: ANI on MF trunks; attached hereto as Exhibit J.

Core to do any of the above, Verizon's policy is clearly arbitrary. More important, Verizon's policy clearly violates the equal in quality and nondiscriminatory interconnection standards because Verizon provides a type of interconnection (i.e., MF signaling with the ANI feature enabled) to some interconnecting carriers (the types bulleted above) but not to others.

Verizon's response is nonsensical and misleading. In its Reply Checklist Declaration before the MDPSC, Verizon "explains" that: "Verizon MD's switching machines can not translate and connect 10-digit local calls, originated from the dial tone lines they serve, to interexchange carrier Feature Group D trunk groups."[66] Verizon is simply stating a truism: unless the caller dials eleven digits (i.e., inserts a "1" in front of the ten digit phone number), the call will be routed locally. However, no one, least of all Core, is asking Verizon to deliver local calls to IXCs. Rather, the "ask" is that Verizon enable a feature set (ANI) on trunk groups that deliver local traffic to CLECs, just as Verizon enables that feature on trunks groups to IXCs, long distance CLECs, and SS7 CLECs.

III. VERIZON'S FAILURE TO PROVIDE ADEQUATE DARK FIBER INFORMATION AND EQUITABLE PROVISION OF DARK FIBER SERVICE VIOLATES CHECKLIST ITEMS FOUR (LOOPS) AND FIVE (TRANSPORT)

Verizon's duty to provide dark fiber unbundled network elements ("UNEs") stems from the unbundling requirement of Section 251(c)(3) of the Act,[67] from Section 271(c)(2)(B)(iv) and (v) of the Act,[68] and from the Commission's 1999 UNE Remand Order, in which Verizon was ordered to make dark fiber available as both a loop and a transport UNE.[69] The Commission has clarified that "[i]n order to establish that it is providing unbundled local loops in compliance with

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66 Verizon Reply Checklist Declaration at 19 attached hereto as Exhibit G.

67 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.319(a)(1) & (d)(1)(ii).

68 47 U.S.C. § 271(c)(2)(B)(iv) and (v).

69 15 FCC Rcd at 3776, 3843-46, ¶¶ 174, 325-330 ("UNE Remand Order").

checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality."[70] Verizon has not satisfied its obligations. It has been Core's experience that Verizon has refused to provide adequate dark fiber information in order for Core to make timely and through network decisions. Additionally, Verizon has arbitrarily refused dark fiber requests, not on the basis of an interconnection agreement, or Commission rule, but rather based on its company "Handbook."

A. Verizon's Refusal to Provide Information Regard Dark Fiber Local and Availability Violates Checklist Items Four and Five

Verizon has failed to demonstrate that it has committed to a concrete and specific legal obligation to provide dark fiber UNEs in quantities that competitors demand and at an acceptable level of quality. One of the overriding problem with Verizon's current dark fiber "offering" is that it precludes CLECs from effectively identifying specific dark fiber loop and transport segments that may be available as UNEs. As Core witness Douglas Dawson testified before the MDPSC:

> [t]he current rules don't really let a CLEC understand what dark fiber is available. I certainly equate that to a game of Battleship, we have to guess is there fiber around A to B, make my request, get it accepted or rejected. If that doesn't work, come back to B, come back to C, come back to D. So it's very, very difficult for a CLEC to understand the Verizon network. Again, there's other ways that it could be done.[71]

Without some comprehensive view of Verizon's fiber network - such as the one Verizon undoubtedly uses for its own network planning purposes - CLECs are as a practical matter prevented from accessing dark fiber UNEs.

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70 Virginia 271 Order, at § C-26.

71 MDPSC Case No. 8921, Transcript, at 724 attached hereto as Exhibit C.

Although Verizon's updated Model Interconnection Agreement ("Model ICA") – which Verizon provided to the MDPSC and other parties for the first time during the hearings in the Verizon 271 compliance proceeding – provides for CLEC access to wire center maps,[72] and route-specific field surveys,[73] both forms of information are larded down with numerous caveats and restrictions. To gain access to wire center maps, for instance, CLECs must first "negotiate"[74] an interval, obtain a cost estimate, then wait as Verizon prepares up to the minute maps on a time and materials basis. This is far from the type of seamless access to existing Verizon records which CLECs would need to compete effectively. It is also a clear violation of the Commission's mandate that Verizon "provide to competitors the same detailed underlying information regarding the composition and qualifications of the [dark fiber] loop that the incumbent itself possesses."[75]

In any case, nothing in the record demonstrates that the dark fiber provisions of the Model ICA have been successfully adopted by any CLEC in Maryland. Nor is it clear that a CLEC wanting to update its interconnection agreement solely for access to dark fiber would be able to "pick and choose" dark fiber provisions out of the Model ICA. In Core's own experience, Verizon's dark fiber amendment template is vastly different from the dark fiber provisions of the Model ICA.

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72 Verizon Model Interconnection Agreement ("Model ICA") at p.112, §8.2.19.1.

73 *Id.* at p.112, §8.2.19.2.

74 Verizon Model Interconnection Agreement ("Model ICA") at p.112, §8.2.19.1.

75 *In the Matters of WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, at 234, ¶ 473 ("Virginia Arbitration Order").

B. Verizon Arbitrarily Refuses to Provision Dark Fiber Transport Across LATA Boundaries

Recently, Core has submitted requests for dedicated dark fiber circuits across LATA boundaries. In particular, Core has requested that Verizon provision a dedicated dark fiber circuit between Core's points of presence("POPs") in Damascus (in the Maryland portion of the Washington, D.C. LATA) and Mt. Airy (in the Baltimore LATA), a distance of about five miles. The only reason Verizon can put forth for refusing Core's request is that its company "Handbook" prohibits such an offering. Verizon's "Handbook" has no legal value and, therefore, is no justification for refusing to satisfy its obligation to provide dark fiber. Clearly, Verizon has the fiber, it just won't provide it to Core.

There are no LATA restrictions in the dark fiber provisions of the current Core/Verizon interconnection agreement and subsequent amendment. While Verizon went to great lengths to include numerous restrictions in the dark fiber interconnection amendment, LATA restrictions was not one of them. In addition, there are no Commission rules that expressly prohibit the provision of dark fiber transport circuit across LATA boundaries Verizon would not be originating any interLATA services on such a circuit, and thereby would not be violating section 271 of the Act. Furthermore, mentioned above, there are no expressed prohibitions to a BOC provisioning to a CLEC a dedicated dark fiber circuit across LATA boundaries. Verizon's refusal to cooperate with Core in its dark fiber requests is simply another tactic to hamper Core's business and any competition in Maryland.

Finally, the integrity of Verizon's entire dark fiber offering in Maryland is marred by the apparent existence of an unfiled dark fiber amendment with a single CLEC. According to Verizon, it entered into an agreement with "Cavalier" by which Verizon would provide Cavalier

with parallel provisioning of collocation and dark fiber UNEs.[76] Amazingly, it appears Verizon does not believe it has a duty to make its dark fiber agreement with Cavalier available to other CLECs. The following colloquy fully demonstrates Verizon's arrogance:

> Q. It's paragraph 136, notes that Verizon entered into agreements with Cavalier for the, quote, parallel provisioning, close quote, of collocation arrangements in unbundled interoffice dark fiber in Maryland as well as a couple of other jurisdictions. In Maryland, do you know when Verizon entered that agreement with Cavalier?
>
> A. MS. SHOCKET: I'm not exactly sure about the date, but I know we have provisioned approximately 170 orders with Cavalier in the second and third quarter of this year using the parallel provisioning process.
>
> Q. So it would be, I guess, sometime prior to the second quarter of this year?
>
> A. MR. ALBERT: I think the first orders 00787 for that trial showed up in May. So we actually got the first whack of orders from Cavalier, some in Maryland, some in D.C., some in Virginia, in May of this year.
>
> Q. And that amendment was entered into between Verizon and Cavalier sometime prior to May?
>
> A. MR. ALBERT: We may have even started before the amendment was final and officially signed. There was a need to get going on it and we got going.
>
> Q. Right. And has that amendment or that trial agreement been filed with the Commission?
>
> A. MR. ALBERT: I don't know. I think you're right that officially it was called a trial agreement. I am not sure of the particulars of that document, you know, if it was an addendum to the interconnection agreement or if it was its own stand-alone thing or not. So –
>
> Q. Was that trial agreement filed with the Commission?
>
> A. MR. ALBERT: I don't know.[77]

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[76] MDPSC Case No. 8921, Reply Checklist Declaration at 57 ("[B]ased upon Cavalier's stated need, Verizon has entered into trial agreements with Cavalier for the parallel provisioning of collocation arrangements and unbundled interoffice facility dark fiber in Maryland.") attached hereto as Exhibit G.

[77] MDPSC Case No. 8921, Transcript at 786-87 attached hereto as Exhibit C.

To summarize, beginning May 2002, Verizon has provided approximately 170 dark fiber orders pursuant to an unfiled parallel provisioning arrangement with Cavalier – an arrangement which Verizon apparently has no intention of filing with the Commission.[78] Clearly, checklist compliance cannot be demonstrated – and indeed is severely compromised – by the existence of secret agreements.

IV. THE PUBLIC INTEREST DICTATES AGAINST APPROVAL OF VERIZON'S 271 APPLICATION AT THE PRESENT TIME

In reviewing Verizon's compliance with section 271(c), the Commission must consider the public interest in a vibrant, competitive market for local telecommunications services. Although there is no single test to determine whether the public interest is met, the existence of viable competition is widely recognized as a vital factor.

Verizon's use of various figures to demonstrate the extent of competition in Maryland id debatable. Core takes specific exception to Verizon's assertion, in its 271 Application, that, in Maryland, CLECs are exchanging "approximately 1.8 billion minutes of traffic per month...."[79] The truth is that the vast majority of the MOUs reported by Verizon are the result of CLECs' relative success in a single niche market - provision of inbound dial up capacity to Internet service providers ("ISPs").

CLECs' relative success with ISP dial up service is demonstrated as follows:

- In the ISP Remand Order,[80] which Verizon has made a concerted effort to implement in Maryland, the FCC set forth a 3:1 ratio of terminating to originating MOUs to identify ISP-bound traffic;[81]

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78 *See*, Verizon Response to In-Hearing Data Request October 29, 2002 No. 7 ("It is Verizon's understanding that neither Verizon nor Cavalier filed the Parallel Provisioning Trial Agreement with the Maryland PSC."). Verizon's responses are attached hereto as Exhibit K.

79 Verizon 271 Application at 18.

80 *Order On Remand And Report And Order In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *In re*

- Traffic delivered by a Verizon to a CLEC that falls within the 3:1 ratio is considered voice traffic;[82]

- Traffic delivered by Verizon to a CLEC that exceeds the 3:1 ratio is considered ISP-bound traffic;[83]

- The most up-to-date figures provided by Verizon indicate that Verizon delivered 1,785,651,793 MOUs to CLECs versus 64,790,502 MOUs delivered by CLECs to Verizon, in August, 2002,[84] for a total of 1,850,442,295 MOUs exchanged in both directions;

- Of the traffic delivered by Verizon to CLECs, 194,371,506 MOUs fall within the 3:1 ratio, and can be considered voice,[85] while the remaining 1,591,280,287 MOUs exceed the 3:1 ratio and can be considered ISP-bound;[86]

- Thus, approximately 86% of the total MOUs exchanged between Verizon and CLECs in Maryland in August were delivered to CLECs' ISP customers.[87]

While ISPs are an important niche market, the relative success of CLECs in serving that one niche cannot support the proposition that the market for local telecommunications services, on the whole, is open to competition. Rather, the success of CLECs in serving ISPs would

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Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, 16 FCC Rcd. 9151, ¶ 79 (2001).

81 *Id.*

82 *Id.*

83 *Id.*

84 MDPSC Case No. 8921, Verizon Response to In-Hearing Data Request October 29, 2002 No. 5 attached hereto as Exhibit K.

85 That is, 194,371,506 is the product of the number of MOUs delivered by CLECs to Verizon, multiplied by three.

86 That is, 1,591,280,287 is the total number of MOUs delivered by Verizon to CLECs, less those that fall within the 3:1 ratio.

87 This is the result of dividing the total number of MOUs that exceed the 3:1 ratio (1,591,280,287) by the total number of MOUs exchanged in either direction (1,850,442,295).

appear to be a glaring aberration in Verizon's otherwise sterling record of stifling competition.[88] At least with respect to facilities-based competition, ISP-bound traffic is the only form of traffic of which CLECs have a significant share in Maryland. In a truly open, competitive market, one would of course expect voice traffic to predominate in proportion to ISP-bound traffic -- not the other way around.

In its 271 Application, Verizon incorrectly states that a finding by this Commission that Verizon has satisfied its 271 obligations, "is buttressed by the finding of the state commissions at issues here. Both the Maryland and West Virginia commissions have found that Verizon satisfied the requirements of the checklist **in all respects**."[89] Verizon goes on to cite the MDPSC December 17, 2002 letter, however what the letter actually says is, "[t]he Commission finds that **subject to Verizon complying with the conditions identified below**, Verizon is technically in compliance with the §271 checklist as defined by the FCC." Verizon is more that stretching the conditional recommendation of the MDPSC. Furthermore, to date, Verizon has taken no steps to comply with the MDPSC's conditions by working with Core to provide interconnection over shared entrance facilities.

In Core's view, Verizon has paid nothing more than lip service to the MDPSC's conditions regarding entrance facility interconnection and dark fiber – the only two that presently affect Core. Core expects that other carriers will point out Verizon's failure to comply with other provisions of the MDPSC's conditional approval letter. As demonstrated by Core, Verizon

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88 At the MDPSC hearing Verizon was asked to produce a breakdown of MOUs exchanged between Verizon and CLEC UNE-P lines. Verizon essentially declined to answer and declined to respond to repeated requests for clarification by Core's counsel. *See*, Verizon Response to In-Hearing Data Request October 29, 2002 No. 5. attached hereto as Exhibit K. The natural conclusion is that Verizon does not exchange any meaningful volume of MOUs with UNE-P CLECs.

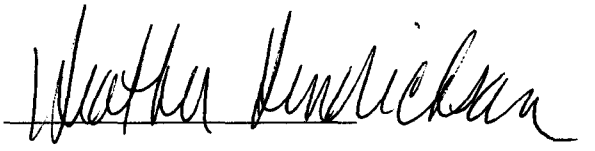
89 Verizon 271 Application at 13.

has not yet satisfied its 271 obligations in Maryland and a grant of §271 authority at this time would bring any potential future compliance to a grinding halt.

V. CONCLUSION

For the foregoing reasons, Core respectfully request that the Commission find that Verizon has not complied with Section 271 and deny the application accordingly.

Respectfully Submitted



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